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OFFICE OF PETITIONS

In re Application of :
Melbourne F. Giberson et al. : **ON PETITION**
Application No. 10/782,205 :
Filed: February 19, 2004 :
Attorney Docket No. TRI8300D7 :

This is a decision on the petition filed May 5, 2006, to withdraw the holding of abandonment of the above-identified application under 37 CFR 1.181.

The petition is **GRANTED**.

The above-referenced application was held abandoned on December 12, 2003 for failure to file a proper reply to a Final Office Action mailed September 11, 2003 in compliance with 37 CFR 1.113. Accordingly, a Notice of Abandonment was mailed November 16, 2004.

A Notice to File Missing Parts mailed May 14, 2004 required the filing of an Oath or Declaration. In response thereof, on May 24, 2004, petitioner filed an oath or declaration from parent application 10/171,125 naming five inventors, executed by all inventors except the fifth named inventor, Robert D. Walker. A Notice of Incomplete mailed June 3, 2004 advised that the period for response continued to run from May 14, 2004, the mailing date of the Notice to File Missing Parts and that the response filed May 24, 2004 did not include the signature of joint inventor Robert D. Walker. Petitioners then responded on June 10, 2004 with an explanation that the inventorship of parent application 10/171,125, of which the instant application is a division, had been corrected by preliminary amendment and that Robert D. Walker was not an inventor in the parent application or the instant divisional application.

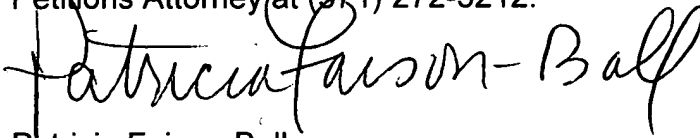
Although the oath or declaration filed herein does in fact have Robert D. Walker included as an inventor, a review of the file record of the parent application reveals that Robert D. Walker's name is not included in the file history and is not included on the face of the issued patent. Furthermore, as the oath or declaration was timely filed and as the explanation of inventorship was timely filed in response to the Notice of

Incomplete Reply, pursuant to 37 CFR 1.63(d)(1) and (2)¹, petitioners had substantially complied with the Notices mailed and thus the application should not have been deemed as abandoned.

In view thereof, the holding of abandonment is hereby withdrawn. No petition fee is necessary and none has been charged.

This matter is being referred to the Office of Initial Patent Examination to remove the name of Robert D. Walker from this application, for the mailing of a corrected filing receipt and for further pre-examination processing.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

¹37 CFR 1.63:

(d) (1) A newly executed oath or declaration is not required under § 1.51(b)(2) and § 1.53(f) in a continuation or divisional application, provided that:

(i) The prior nonprovisional application contained an oath or declaration as prescribed by paragraphs (a) through (c) of this section;

(ii) **The continuation or divisional application was filed by all or by fewer than all of the inventors named in the prior application;**

(iii) The specification and drawings filed in the continuation or divisional application contain no matter that would have been new matter in the prior application; and

(iv) A copy of the executed oath or declaration filed in the prior application, showing the signature or an indication thereon that it was signed, is submitted for the continuation or divisional application.

and

(d) (2) The copy of the executed oath or declaration submitted under this paragraph for a continuation or divisional application must be accompanied by a statement requesting the deletion of the name or names of the person or persons who are not inventors in the continuation or divisional application.